

The Honorable Ricardo S. Martinez

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WASHINGTON STATE ASSOCIATION OF HEAD
START AND EARLY CHILDHOOD ASSISTANCE
AND EDUCATION PROGRAM, ILLINOIS HEAD
START ASSOCIATION, PENNSYLVANIA HEAD
START ASSOCIATION, WISCONSIN HEAD
START ASSOCIATION, FAMILY FORWARD
OREGON, and PARENT VOICES OAKLAND,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity
as Secretary of Health and Human Services; U.S.
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; ANDREW GRADISON, in his official
capacity as Acting Assistant Secretary of the
Administration for Children and Families;
ADMINISTRATION FOR CHILDREN AND
FAMILIES; OFFICE OF HEAD START; and TALA
HOOBAN, in her official capacity as Acting Director
of the Office of Head Start,

Defendants.

Case No. 2:25-cv-00781-RSM

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

NOTICE ON MOTION
CALENDAR: AUGUST 5, 2025

I. Introduction

Plaintiffs seek leave to amend their operative First Amended Complaint, ECF No. 31 (“Plaintiffs’ Motion” or “Motion for Leave”), to add factual allegations and claims relating to Defendants’ July 14, 2025 Immigrant Exclusion Directive, which was issued after Plaintiffs filed the operative complaint and gives rise to additional claims in this case. Defendants do not argue that that amendment would prejudice Defendants in any way, would cause undue delay in the case, or is sought in bad faith. *See* ECF No. 90. Rather, Defendants’ sole challenge to Plaintiffs’ Motion is that three of the four new claims pled in the Proposed Second Amended Complaint are futile.¹ *See id.* at 2. Plaintiffs’ proposed claims are not futile, and Defendants fail to make any showing that they would be, instead simply repeating arguments opposing Plaintiffs’ motion for a temporary restraining order. Because Plaintiffs meet the standard for amending the complaint, the Court should grant leave to amend, and decide the merits of Plaintiffs’ motion for a temporary restraining order in connection with that motion.

II. Argument

Under Federal Rule of Civil Procedure 15, leave to amend is “freely given” with “extreme liberality,” and courts must grant all inferences in favor of allowing amendment. Fed. R. Civ. P. 15(a)(2); *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999). The party opposing amendment has the burden of showing that the amendment is not warranted. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence*, 316 F.3d at 1052 (citation and quotation omitted).

¹ In opposing Plaintiffs’ Motion for Leave, Defendants do not object to Plaintiffs’ proposed amendment to add a claim for violations of the Separation of Powers and the Spending Clause against Defendants Department of Health and Human Services (“HHS”) and Robert F. Kennedy, Jr., or argue as to why Plaintiffs should not be given leave to amend to add this claim. *See* ECF No. 78 at 122–124. Because Defendants have not opposed the addition of this new constitutional claim, amendment should be granted.

Defendants do not argue that they would be prejudiced by amendment, which the Ninth Circuit considers “the most important factor in the Rule 15 analysis.” *Ecojet, Inc. v. Luraco, Inc.*, 2017 WL 6939158, at *3 (C.D. Cal. Mar. 22, 2017) (citing *Irise v. Axure Software Solutions, Inc.*, 2009 WL 3615973 at *7 (C.D. Cal. Jul. 30, 2009)). *See also Eminence*, 316 F.3d at 1052 (prejudice is the “touchstone” of the Rule 15 inquiry). Nor do Defendants allege that Plaintiffs seek amendment in bad faith; that Plaintiffs’ motion to amend was unduly delayed; or that Plaintiffs should have raised their new facts and claims in the operative complaint. *See Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990); *Foman v. Davis*, 371 U.S. 178, 182 (1962). The only *Foman* factor Defendants raise is futility, but their arguments focus entirely on whether Plaintiffs should prevail on the merits of the additional claims in the proposed Second Amended Complaint, not on the questions actually pertinent to the futility inquiry under Rule 15. As explained below, Plaintiffs’ proposed amendments satisfy the Rule 15 standard, and Defendants’ arguments about the merits of the claims added in the Second Amended Complaint are unpersuasive, both as to leave to amend—the issue in this motion—and as to Plaintiffs’ motion for a temporary restraining order, as set forth in Plaintiffs’ motion for a temporary restraining order (ECF No. 79), and as will be addressed further by Plaintiffs during the August 5, 2025 hearing on that motion.

A. Defendants’ arguments are not appropriate grounds to deny a motion for leave to amend based on futility.

To successfully oppose a motion to amend a complaint based on futility, a party must allege and demonstrate deficiencies that “could not be saved by any amendment.” *Krainski v. State of Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Ed.*, 616 F.3d 963, 972 (9th Cir. 2010). This applies to fatal flaws evident on the face of the pleading such as claims brought outside of the statute of limitation or where the authorizing statute expressly prohibits the type of claims brought. *See, e.g., Ghorbanian v. Guardian Life Insurance Co. of America*, 2016 WL 11782609, at *2 (W.D. Wash. Sept. 27, 2016) (denying motion for leave to amend where plaintiff’s proposed claim was made outside the relevant statute of limitations); *Saul v. United*

1 *States*, 928 F.2d 829, 843 (9th Cir. 1991) (denying plaintiff's proposed amendment to seek
 2 injunctive relief as futile where the underlying statute precluded plaintiff from seeking
 3 injunctive relief for his asserted injuries); *see also Entangled Media, LLC v. Dropbox Inc.*, 348
 4 F.R.D. 649, 656 (N.D. Cal. 2025) ("Where a proposed amended claim involves complicated
 5 factual or legal issues, it is generally preferable for the sufficiency of that claim to be addressed
 6 on a fully briefed motion to dismiss rather than under the more circumscribed Rule 15(a)
 7 'futility' analysis.").

8 Here, Defendants do not argue that Plaintiffs' proposed claims are outside the relevant
 9 statute of limitations, that Plaintiffs lack standing, or that Plaintiffs seek relief that is otherwise
 10 procedurally prohibited. Rather, Defendants merely repeat the arguments from their opposition
 11 to Plaintiffs' motion for a temporary restraining order, which involve issues going to the merit
 12 of Plaintiffs' claims. *See* ECF No. 90 at 2 ("For the same reasons set forth in Defendants'
 13 opposition to Plaintiffs' motion for a temporary restraining order, Plaintiffs fail to state a claim
 14 under the Administrative Procedures Act (APA) to challenge HHS's Notice reinterpreting
 15 PRWORA."). *See also Her Majesty Queen in Right of Canada as Represented by Minister of*
 16 *Agric. & Agri-Food v. Van Well Nursery, Inc.*, No. 2:20-CV-00181-SAB, 2022 WL 1841625, at
 17 *3 (E.D. Wash. Apr. 26, 2022) (granting leave to amend and finding that defendants' futility
 18 argument was "sufficiently complex that the parties are best served by waiting to assert
 19 dispositive motions once the operative complaint is in place").

20 Denying leave to amend based solely on the argument that Plaintiffs' claims are futile
 21 on their merits is particularly inappropriate at this early stage of litigation because Plaintiffs'
 22 proposed Second Amended Complaint adds new claims based on facts arising after the filing of
 23 the operative complaint, Defendants have not yet filed any responsive pleading, and none of
 24 Plaintiffs' claims have been tested through any dispositive motions. *See Foman v. Davis*, 371
 25 U.S. 178, 182 (1962) ("If the underlying facts or circumstances relied upon by a plaintiff may
 26 be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the
 27 merits."); *Broadcom Corp. v. NXP Semiconductors N.V.*, No. 813CV0829MRPMANX, 2014

1 WL 12577095, at *3 (C.D. Cal. Mar. 12, 2014) (“[D]enying leave to amend solely on the basis
 2 of futility is ‘rare,’ and practicality and logic counsel that where futility is the sole objection to
 3 an amendment, the nonmoving party should ‘consider stipulating to the amendment and
 4 moving directly to dismiss or strike under Rule 12.’”) (quoting William W. Schwarzer, A.
 5 Wallace Tashima & James M. Wagstaffe, 2 California Practice Guide: Federal Civil Procedure
 6 Before Trial 8:1515 (Rutter Group rev. ed. 2014)).

7 None of the cases Defendants cite provides an example of a court denying leave to
 8 amend based solely on futility where the proposed amendment added new claims based on new
 9 factual developments, nor do any of Defendants’ cites provide a reason for doing so in this
 10 case, where Defendants have not alleged any facial pleading deficiency. *See Pappy's Barber*
 11 *Shops, Inc. v. Farmers Grp., Inc.*, 491 F. Supp. 3d 738, 739–40 (S.D. Cal. 2020) (denying
 12 motion for leave to amend following dismissal of complaint, finding that the “proposed
 13 amended complaint [did] not remedy the deficiencies that caused the Court to dismiss the
 14 original complaint”); *Novak v. United States*, 795 F.3d 1012 (9th Cir. 2015) (affirming district
 15 court’s dismissal without leave to amend where the court found that amendment would be
 16 futile because plaintiffs lacked standing); *Woods v. First Am. Title, Inc.*, No.
 17 CV111284GHKVBKX, 2011 WL 13218022 (C.D. Cal. Sept. 20, 2011) (rejecting the proposed
 18 amended complaint for failure to allege facts related to a necessary element of Plaintiffs’ claim
 19 but *granting* the underlying motion for leave to amend, permitting Plaintiffs to file a new
 20 complaint within 21 days); *Bonin v. Calderon*, 59 F.3d 815 (9th Cir. 1995) (denial of motion to
 21 amend for futility was not abuse of discretion where the proposed amended complaint merely
 22 pleaded new legal theories to support existing claims).

23 **B. The claims in the proposed Second Amended Complaint meet and exceed the**
 24 **pleading standard.**

25 Even if a motion to amend required the Court to more closely examine the merits of
 26 Plaintiffs’ proposed additional claims, Plaintiffs are likely to succeed on the merits of their
 27 claims, necessarily exceeding the threshold for futility, which Defendants claim should be

1 evaluated under the same standards as a motion under Federal Rule of Civil Procedure
 2 12(b)(6). *See* ECF No. 79 at 18–31. As set forth in Plaintiffs’ motion for a temporary
 3 restraining order, Defendants’ Immigrant Exclusion Directive violates the APA because: in
 4 issuing the Directive, Defendants failed to comply with the procedural requirements of the
 5 Head Start Act and APA (ECF No. 79 at 29–31); Head Start does not provide welfare or
 6 “another similar benefit” under PRWORA (ECF No. 79 at 23–25); Head Start is not a “federal
 7 public benefit” under PRWORA (ECF No. 79 at 19–23); the Directive conflicts with the Head
 8 Start Act (ECF No. 79 at 25–26); and the Directive is arbitrary and capricious (ECF No. 79 at
 9 26–29).

10 In their opposition to the instant motion, Defendants fail to address the bulk of
 11 Plaintiffs’ arguments demonstrating their likelihood of success on the merits, further
 12 demonstrating that the issues are sufficiently substantive that it is “preferable for the
 13 sufficiency of [the] claim to be addressed on a fully briefed motion to dismiss rather than under
 14 the more circumscribed Rule 15(a) ‘futility’ analysis.” *See Entangled Media, LLC*, 348 F.R.D.
 15 at 656. *See also Padilla Constr. Co. v. Acosta*, No. CV 18-1214-GW-AGRX, 2020 WL
 16 11673988, at *1 (C.D. Cal. Dec. 4, 2020) (finding defendants futility arguments “sufficiently-
 17 complex” such that “they are best heard in the context of a fully-briefed motion to dismiss, in
 18 which Defendants will have the opportunity to file both the motion and a reply brief”).

19 **III. Conclusion**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their
 21 motion for leave to file the proposed Second Amended Complaint.
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The undersigned certifies that this brief contains 1,708 words, in compliance with the Local Civil Rules.

Dated: August 4, 2025

Respectfully submitted,

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